2742

SUPREME COURT OF THE UNITED STATES.

No. 263.

THE UNITED STATES, APP'TS,

vs.

ANDRES PICO.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twenty-second day of September, anno domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Andres Pico, for the place named "Moquelamos," was presented, and ordered to be filed and docketed with No. 357. and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January* 22, 1853.

In case No. 357, Andres Pico, for the place named "Moquelamos," the deposition of Nicholas A. Den, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with documents marked H. J. T., Nos. 1 and 2, annexed thereto, was filed.

(Vide page 4 of this transcript.)

SAN FRANCISCO, *Sept.* 13, 1853.

Case No. 357 called. On motion of the counsel for the claimant, ordered to the foot of the docket.

SAN FRANCISCO, *June* 20, 1854.

Case No. 357, on motion, was ordered to be placed at the foot of the calendar of the first class cases on the trial docket.

SAN FRANCISCO, *August* 29, 1854.

Case No. 357 was submitted without argument, and taken under advisement.

SAN FRANCISCO, *October* 3, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(Vide page 17 of this transcript.)

And the following order was made, to wit:

(Vide page 19 of this transcript.)

Petition.

To the honorable board of U. S. land commissioners for the adjudication of private land claims in California.

Your petitioner, Andres Pico, a native of Mexico, and citizen of Los Angeles, in California, respectfully represents, that in the month of May, 1844, your petitioner presented his petition to Pio Pico, then Governor of California, and as such duly empowered to grant lands therein, for a grant of eleven leagues of land constituting the tract known as Moquelemos, situate in the present county of Caleveras; that thereupon the said Governor proceeded to obtain, according to law, the required information in regard to the stating of the petitioner and the object of the petition, and on the sixth day of June, A. D. 1846, duly made to your petitioner the grant of the said land, which is herewith filed, with a translation thereof.

That said grant was duly approved by the Departmental Assembly of California on the fifteenth day of June, 1846.

That said land is bounded on the north by the southern shore of the Mquelemos river, on the east by the Sierra, or range of mountains called , on the south by the lands of Mr. Gulnak, and on the west by the estuaries of the beach. That your petitioner therefore took possession of said land, and has continued in possession ever since, and that he knows of no conflicting claim thereto. He therefore prays that his said claim and title to said land be duly confirmed by your honorable board.

CLARK, TAYLOR & BECKH,
Att'ys for Petitioner.

Filed in office September 22, 1852.

GEO. FISHER, *Sec.*

Deposition of Nicholas A. Den.

SAN FRANCISCO, *January* 22, 1853.

On this day, before court (Harry J. Thornton) came Nicholas A. Den, a witness in behalf of the claimant, Andres Pico, petition No. 357, and was duly sworn, his evidence being given in English. The U. S. associate law agent was present.

Questions by claimant.

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is Nicholas H. Den, my age forty years, and my place of residence Santa Barbara.

Quest. 2d. Look at the documents now shown you, marked exhibits 1 and 2, and attached to your deposition, purporting the one to be an original grant from Pio Pico to Andres Pico of the

land known as "Moquelamos," the other the approval of said grant. State what you know concerning said documents, and whether you recognize the signatures thereto to be genuine.

Answer. I have examined the documents marked exhibits 1 and 2 filed with this deposition. I have no doubt of their genuineness. I am well acquainted with *their* handwriting of Pio Pico and Jose Matias Moreno, having often *seen* them write; and state that their signatures in and upon said documents are their genuine signatures.

N. A. DEN.

Sworn and subscribed before me this 22d of January, 1853.

HARRY J. THORNTON,
Com'r, &c.

Service acknowledged.

R. GREENHOW,
Ass't Land Agent.

Filed in office January 22, 1853.

GEO FISHER, *Sec.*

Doc. H. J. T. No. 1. Anne oc. to dep. of N. A. Den.

Pio Pico, Gobernador Constitucional del Departamente de Cali-
[SEAL.] fornias.

Por cuanto Don Andrec Pico, Mejicano de nacimiento ha poretendido pa. lu beneficio personal zel de su familia el terreno conocide con el nombre de "Moquelamos" en estencion de once, sitios de ganado myor practicadas de préviamente las diligencias y a veriguaciones convernientes segun lo dispuerto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la nacion Mejicana, he venido en concederle el torreno mencionado, declarandole la propiedad de el por las presentes tebras à resever de la aprobecion de la exma. Asamble a Departamental y bajo las condiciones siginentes.

1a. Sera dueño en propiedad de once sitios de ganado mayor en el rei del Moquelamos que linda al norte con la orilla sur de dicho: rio al oriente con la sierra immidiata, al sur con el terreno del Señor Gulnak, y al poniente con los esteros de la playa.

2a. El terreno que se le adjudica, le memteri drà libre de fianza, hipoteca ni otro grawamen alguno, ni enagenareo en poder de manoc muertas.

3a. Pedirà al juez respectivo que le dé la posesion juridica en virtud de este despacho pr. el cual se la demarcaran los linderos poniendo las mojoneras de estilo.

4a. Podre cercarlo sin perjendicar las trenecias cerminos y seridum tres; lo disfutarà libre y esclusioamente destinan dolo al uso

yaproreecharniento que mejor le conoiniere perono podre enagenarlo antes de cuatro años de haber recibido la judicial posecion.

5a. Si contravenieri à estas conduciones perdera serderecho al terreno y sera denunciable por otro que carezca de terreno y lo pretenda. Por tanto mando que seniendose el presente titulo por forme y valedero, se tome rerzon de el en el libro à que corresponde y se le entegue al interezado para su resguardo y demas fines.

Dadoen la cuidad de los Angelos, capital del departamente de Californias, en papel comun por falta de sellado à los seis dias del mes des de junio del año de mil ochocientos cuarenta y seis.

PIO PICO.

JOSE MATIAS MORENO,

Scrio Into.

Que da tomada razon de este superior despacho en el libro respectivo.

MORENO.

Filed in office Jan'ry 22, 1853.

GEO. FISHER, *Secr'y.*

"*B.*" *Translation of Grant.*

(Translation of grant.)

Pio Pico, constitutional governor of the department of Californias.

Inasmuch as Andres Pico, a Mexican by birth, has solicited for his personal benefit, and that of his family, the land known by the name of "Moquelamos," to the extent of eleven square leagues; having first made the necessary inquiries and investigations, according to the requisitions of the laws and regulations, using the faculties in me vested; in the name of the Mexican nation I have now ceded the land mentioned, declaring it his property by these presents, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He will be owner in fee of eleven square leagues on the river "Moquelemos," bordering on the north upon the southern shore of said river, on the east upon the adjacent ridge of mountains, on the south upon the land of Mr. Gulnak, and on the west upon the estuaries of the shore.

2nd. The land which is hereby ceded he will keep free from obligations, mortgage, and every other incumbrance, and he will not convey it in mortmain.

3rd. He will apply to the proper justice to give him juridical possession by virtue of this title, who will designate the boundaries, placing the usual landmarks.

4th. He may enclose it without prejudice to the ways, roads, and servitudes. He will enjoy it freely and exclusively, appropriating it to such culture and use as may best suit him, but he must not

sell it till four years after he shall have obtained juridical possession.

5th. If he shall violate these conditions, he will loose his right to the land, and it will be denouncable by another who may want and ask for the land. Wherefore I order that, the present title being held as firm and valid, an entry of it be made in the corresponding book, and that it be given to the party for his security and other ends.

Given in the city of Los Angeles, the Capitol of the department of Californias, on common paper, for want of stamped, on the sixth day of June, in the year eighteen hundred and forty-six.

PIO PICO.
JOSE MORIAS MORENO.

This superior despatch has been entered in the corresponding book.

MORENO.

1. S. D. K. 6. Approval Depart'l Assembly. I. S. D. K.

Asamlea depart'l de ordere de la ex'ma a d California.

Samblea departamental, paso à manos de V. O. para e lsuperior conocimiento del Ex'mo S'or Gobernador, tres titulos de terreno concedidos al Norte de este departamte por el gobrerno del misino en favor de los S'res D'n Guillermo Gulnack, comanat'e de escuadron, D'n Andres Pico y D'n Francisco Azec, relativos, el primero su fha. 13 de Enero, de 1844, à once citios de Ganado mayor ence punto llmado Campo de los Franceses, el segundo fha. 5 de Junio, pp'do igualm't'l de once sitios de ganada mayor en el rio de los Moquelunes, yel terreno de seis citios en sta. Isabel, cuyos tres titulos, qr. tanto recomendo el pronto despacho de ellos O. E. el S'or Gobernador, fueron aprobados, conforme à la ley de la materia en sesion de hoy por este honorable cuerpo à qr. tengo el honor de pertenecer como disputado secretario.

Y cumpliendo cona quella superior disposicion, le digo a V. O. p'a el fin indicado, protestandole à la ver, las mas distinguidas consideraciones al mi particular aprecio.

Dios y libertad, sala seciones, en los Angeles, à 15 de Julio, de 1846.

NARCISSO BOTELLO, *Dep. Scrio.*

S'or Secret'o del despacho de gobrerno de
este department, D'n Jose Matias Moreno.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do here-

by [certify] that the two preceding and hereunto annexed pages of tracing paper, numbered one and two, and each of which is verified by my initials (S. D. K.,) exhibit a true and accurate copy of a document on file, and forming part of the said archives, in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 25th day of June, 1852.

SAM'L D. KING, [SEAL.]
Surv'y'r Gener'l, Cal.

Filed in office Sept. 1st, 22nd, 1852.

GEO. FISHER, *Secr'y.*

Translation of Approval Dep't Assembly.

DEPARTMENTAL ASSEMBLY OF CALIFORNIA.

By order of the excellent departmental assembly, I convey unto your hands for the superior knowledge of the excellent Sor Governor, these title deeds to land granted in the north of this department by the government of the same, in favor of Messrs. Guillemo Gulnack, the squadron commander, D'n Andres Pico, and Don Francisco Arce, relatives; the first named dated 13th January, 1844, to eleven square leagues in the point called campo de los Franceces, the second dated 5th June last, likewise to eleven square leagues on the river of los Moquelamos, the third to six square leagues (sitios) in sta Ysabel, which three title deeds, of which I at the same time recommended the speedy despatch, his excellency the governor, were approved, conformable to the laws of the matter in to-day's session by this honorable body, to which I have the honor to belong as secretary.

And complying with that superior arrangement, I communicate it to you for the purpose indicated, assuring you at the same [time] of the most distinguished considerations of my particular esteem.

God & liberty. Hall of sessions, Los Angelos, the 15th of July, 1846.

(Signed) NARCISO BOTELLO,
Dep. Sec'y.

To the Secretary of State of the government
of this department, Jose Matias Moreno.

Filed in office Sept. 3rd, 1853.

GEO. FISHER, *Sec.*

No. 2. Doc. H. J. T. annexed to Dop. of N. A. Den.

Pio Pico, gobernador constitucional del departemento de Californias.

La exiña asamblea departmental en sesion de boy tubo a bien de

cretar lo siguiente: "seaprueba la consecion hecha à favor de Don Andres Pico," de once sitios de ganado mayor en el rio de los "Moquelamos," que le fue concedido por el superior gobierno departamental segun titulo libraducon fha seis de Junio, del corriente año, de entera conformidad con la ley de 18 de Agosto, de 1824, y articulo 5o del reglamento supremo de 21 de Noviembre, de 1828, y para resguardo de la parte de Don Andres Pico lohgo asi saber.

Dado en la cuidad de los Angeles, capital del department de Californias en papel comun por falta del sellado à los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

PIO PICO.
JOSE MATIAS MORENO,
Scrio Int.

Filed in office Jan'ry 22d, 1853.

GEO. FISHER, *Sec'ry.*

"D." Translation of Minutes Departmental Assembly.

(Translation.)

Pio Pico, constitutional governor of the department of California.

The most excellent department assembly in session of to-day saw fit to decree as follows: The cession made in favor of Andres Pico of eleven square leagues of land upon the river of the "Moquelemos," which was ceded to him by the superior departmental government, according to the grant issued under date of the sixth of June of the current year, in entire conformity with the law of the 18th of August, 1824, and with the fifth article of the supreme regulations of the 21st of November, 1828, is hereby approved; and for the protection of Andres Pico I thus make it known.

Given in the city of Los Angelles, capital of the Department of Californias, on common paper, for want of stamped, this fifteenth day of June, eighteen hundred and forty-six.

PIO PICO.
(Flourish.)
JOSE MARIAS MORENO,
(Flourish.) *Srio Ynt'd.*

Filed in office Sept. 22nd, 1852.

GEO. FISHER, *Sec.*

Opinion by Commissioner S. B. Farwell.

Claim for a place called Moquelamos, in the county of containing eleven square leagues.

ANDRES PICO
vs.
The United States.

The petition in this case states that he presented his petition for

a grant to the above named premises to Governor Pio Pico, in the month of May, 1846.

And it appears from the documents on file that the said governor, on the 6th day of June, 1846, issued his grant for the same, with boundaries as follows, to wit:

Bounded on the north on the southern shore of the river "Moquelemos," on the east by the adjacent ridge of mountains, on the south by the lands of Mr. Gulnack, and on the west on the estuaries of the shore.

The grant is issued with the usual conditions; and on the 15th day of June, 1846, received the sanction of the departmental assembly.

There is no proof of any segregation, nor has the commission any knowledge of how much land is contained within the boundaries as set forth.

There is no proof of any possession, occupancy, cultivation, or improvement whatever, nor of the performance of any of the conditions of the grant.

The action of the departmental assembly, in the opinion of the Board, has not dispensed with the necessity of a performance of the conditions of the grant necessary to be performed under the provisions of the Mexican colonization law, to entitle the grant to the benefit of the same, nor of a segregation of the land, that the quantity of land granted may be reduced at least to a reasonable degree of certainty.

The Board are of the opinion that the proofs and exhibits in this case are insufficient to establish the validity of the claim, so as to entitle the petitioner to a confirmation of his grant, and that the same should be rejected.

Rejected.

Decree.

ANDRES PICO vs. The United States. } No. 357.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is not valid, and it is therefore decreed that the application for a confirmation be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Oct. 3rd, 1854.

GEO. FISHER, *Sec.*

And it appearing to the satisfaction of this Board, that the land hereby adjudicated is situated in the northern district of California,

it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing nineteen pages, numbered from 1 to 19, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 357 on the docket of the said board, wherein Andres Pico is the claimant against the United States for the place known by the name "Moquelamos."

In testimony whereof, I hereunto set my hand and affix my pri-
[L. S.] vate seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of March, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec.*

Endorsed: Filed April 3rd, 1855. John A. Monroe, clerk.

Notice of Appeal.

Case No. 357. On appeal from the Board of U. S. Land Commissioners.

ANDRES PICO, appellant,
vs.
The United States, appellee. } Claim for "Moqulumne."

SIR: Please take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,
CLARKE, TAYLOR & BECKH,
Att'ys for Claimant..

San Francisco, May 9th, 1855.
To the clerk of the U. S. district court
for the northern district of California.

Endorsed: Filed May 9th, 1855. John A. Monroe, clerk.

Notice of Appeal.

Claim No. 357, on docket of the U. S. Board of Land Commissioners.

ANDRES PICO
vs.
The United States.

To the clerk of the United States court for the northern district of California.

Notice is hereby given in conformity to law, that the above mentioned claimant appeals from the decision of the board of U. S. land commissioners, by which his claim to the tract known as the "Moquelemus" has been rejected.

ANDRES PICO,
By his Attorneys,
STANLY & KING.

San Francisco, 9 May, 1855.

Endorsed: Filed May 12th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Petition for Review.

Docket No. 184.

ANDRES PICO
vs.
The United States. } Appeal.

To the Hon'ble Ogden Hoffman, jun'r, judge of the United States district court for the northern district of California.

The petition of Andres Pico, a citizen of California, respectfully represents:

That under the provisions of the act of Congress of 3d of March, 1851, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract of land therein described, called "Moquelomes," situate in the present county of Sacramento, California, under a grant from Pio Pico, governor of California, dated 6th June, 1846, and accompanied it by evidence of his title, and to which, for more full and particular description, he begs leave to refer.

That his said claim, being designated as No. 357 on the docket of the said commissioners, was rejected by them on the 3d of October, 1854; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings and decision of the commissioners in the case was filed in the office of the clerk of the court for that district, on the 3d of April, 1855,

and on the 9th May, 1855, notice was filed with the said clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal, that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray, &c.

STANLY & KING,
Attor. for Claimant.

San Francisco, 11th June, 1855.

Received a copy this day 11th of June, 1855.

S. W. INGE,
U. S. Dist. Att'y.

Endorsed: Filed June 11th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of C. M. Webber.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, Dec. 31*st*, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles M. Webber, a witness produced on behalf of the claimant in case No. 184, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 357 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Edward Stanly, for claimant, and A. Glassell, on behalf of the United States.

Question by claimant's counsel. Your name, age, and residence.

Answer. I reside in Stockton, San Joaquin county, and am forty-one years of age. I know the rancho called Moquellumne, claimed by Don Andres Pico. Witness being shown the description of the grant, and being asked if, from the description, there would be any difficulty in identifying the land granted, says:

Some of the boundaries are positive by natural lines, the southern line being established by the boundary line of my own claim, the northern boundaries by a river, the Moquelumne, but the western line by the edge of the Tulare; there would, from the description, be no difficulty in identifying the boundaries. The description I allude to is that contained in the transcript of the record, now on

file in the U. S. district court for the northern district of California.

I cannot say how much the boundaries I have named contain.

After June, 1846, the state of the country was such that juridical possession could not have been given to the land. Capt. Sutter was the officer who presided over that section of the country, and was empowered to give *judical* possession, if the same could have been done.

In the fall of 1848, I made a gift to Don Andres Pico of certain improvements which I had made on his land, consisting of several substantial carrals and a small building. Pico had no stock on the rancho, nor a tenant, that I know of from my personal knowledge. The first I knew of the existence of the Moquelumne claim was in the fall of 1848. Indian hostilities existed in that section, which prevented the settlement of the country.

Cross-examined.

I have no interest whatever in the result of this suit.

CHARLES M. WEBER.

Endorsed: Filed January 10th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Petition for Review.

No. 184.

ANDRES PICO vs. The United States. } Appeal—"Moquelome."

To the Hon. Ogden Hoffman, jun., judge of the United States district court for the northern district of California.

The petition of Andres Pico, a citizen of the United States, respectfully represents:

That under the provisions of the act of Congress of the 3rd of March, 1851, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract of land therein described, called "Moquelome," situate in the present county of under a grant made in his favor by Governor Pio Pico, on the 6th of June, 1846, and accompanied it by evidence of his title; and to which, for more full and particular description, he begs leave to refer.

That his said claim, being designated as No. 357 on the docket of said commissioners, was rejected by them on the 3d October, 1854; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings and decision of the commissioners in the case was filed in the office of the clerk

of the court for that district, on the 3rd of April, 1855, and on the 9 May, 1855, notice was filed with said clerk, that your petitioner appealed from such decision.

Your petitioner prays for a re-hearing of the case upon this appeal, that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray, &c., &c.

ANDRES PICO,
By STANLY & KING,
His Att'ys.

Endorsed: Filed April 28th, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Answer.—No. 184.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of California.

ANDRES PICO, appellant,
vs.
The United States, appellee. } Answer—"Moquelome."

The respondents, for answer to the petition filed in this case, answer and say:

It is true that the land mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, lie within the said northern district of California, and within the jurisdiction of this court.

But these respondents deny that the alleged title to said land is valid, and aver that the same is invalid, and pray that the decision of the said board be affirmed, and that the title of the petitioner be decreed to be invalid.

A. GLASSELL,
Act'g U. S. Attorney.

Endorsed: Filed April 28th, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of Dan. Murphy.

UNITED STATES DISTRICT COURT,
Northern District of California.

ANDRES PICO
vs.
The United States.

SAN FRANCISCO, *Dec'r* 5th, 1852.

On this day, before John A. Monroe, commissioner of the Uni-

ted States for the northern district of California, duly authorized to administer oaths, &c., &c., Daniel Murphy, a witness produced on behalf of the claimant in case No. 184, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 357, on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Edward Stanly, for claimant, and the U. S. dist. att'y, G. A. Glassell, esq'r.

Question by counsel for claimant. What is your name, age, and place of residence.

Answer. My name is Daniel Murphy; my residence, Santa Clara county, and I am twenty-nine years of age.

I know the rancho Moqueloumnes claimed by Don Andres Pico, and first knew it in 1844; and in 1848 I saw Don Andres Pico on it with some twenty men and some horses. When I next saw it, was about May, 1849, and I had about one thousand cattle on it, and saw Don Andres Pico, and he gave his consent to my occupying a part of the rancho with my cattle, and in June I put on the rancho about fifteen hundred more. Don Andres then claimed the rancho. Sutter was then the nearest official who could have given juridical possession.

I was, with the consent of Don Andres Pico, on the rancho about eighteen months.

DAN. MURPHY.

Cross-examined.

I have no interest whatever in the rancho.

DAN. MURPHY.

Sworn and subscribed this 5th Dec'r, 1855, before me.

JOHN A. MONROE,
U. S. Com'r.

Endorsed: Filed May 31, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Opinion by the Hon. Ogden Hoffman, District Judge.

U. S.
vs.
Andres Pico.

The claim in this case is founded on a grant made by Gov. Pio Pico, June 6th, 1846, and which was approved by the departmental assembly, June 15th of the same year. The genuineness of the grant and of the certificate of approval is testified to by N. A. Den. No attempts have been made to contradict or impeach him; nor is any doubt suggested as to the authenticity of the papers. A document is also produced from the archives, purporting to be a

communication from the secretary of the assembly, transmitting the *the* title papers to the Secretary del Despacho with the approval of the assembly.

The claim was rejected by the board, for want of proof of occupation and cultivation. Additional testimony has been taken in this court, from which it appears that, in 1848, the grantee had some horses upon the land and took possession of some improvements made upon it by C. M. Weber.

This evidence is of course wholly insufficient to show a fulfilment of the conditions; but if the grant and other papers be regarded as genuine, (under the evidence we are compelled so to consider them,) the grantee obtained a full and complete title from the former government, the failure to perform conditions subsequent, tho' it might have exposed him to a denouncement of the land, did not, until such a proceeding was had, forfeit it, and his vested title remained unimpaired up to the change of sovereignty. But even if in the case of a complete title we were authorized to declare the land forfeited, while the grantee had so unreasonably delayed the performance of the conditions as to justify the presumption that he had abandoned his land, this case would not fall within the principle. The grant was issued about a month before the American flag was raised in this country; the disorder and incidental to the invasion of the country would naturally prevent any settlement in remote parts; and it seems unreasonable to say that any failure to perform conditions of a grant, issued but a few months before the Mexican authority was finally subverted, justify the inference that the grantee had abandoned his land during the existence of the former government, and is now seeking to resume it from its enhanced value. U. S. v. Fremont, 17 How.

The land granted is described as 11 square leagues bordering on the river "Moquelemos," bounding on the north upon the southern shore of said river, on the east upon the adjacent ridge of mountains, on the south upon the land of Mr. Gulnac, and on the west by the estuaries of the shore.

There would seem to be no difficulty in identifying this tract.

This case was submitted many months ago without argument or observation of any kind on either side. It was rejected by the board for non-fulfilment of the conditions. But if the grant be really genuine the non-performance cannot, under all the circumstances, divest the title which the claimant acquired by the grant of the governor, approved by the departmental assembly.

No expediente containing the usual documents (petition, informes, order of concession, deseño, copy of the grant, &c.,) has been produced; no deseño or map of the land has been exhibited. The only paper found in the archives is the communication of Botello, transmitting the titles with the approval of the departmental assembly to the secretary del dispacho, before alluded to.

The production, however, of the original title, authenticated by

the testimony of an unimpeached and uncontradicted witness, leaves us no alternative but to regard it as genuine; and if the grant was duly made and approved, the title to the land passed to the grantee.

To any one acquainted with the facility and unscrupulousness with which in this class of cases frauds have been perpetrated and sustained by testimony apparently conclusive, a grant unsupported either by evidence from the archives or by proof of occupation of the land must appear suspicious. But even in such cases the court is not at liberty, in the face of the uncontradicted testimony of unimpeached witnesses, to substitute its own suspicions for proofs. In the case at bar, however, a document is found in the archives, which affords the best if not the only moral evidence of the genuineness of the grant. Under the proofs in this case, we do not feel warranted in pronouncing the title to be spurious and rejecting the claim.

A decree of confirmation must therefore be entered.

Endorsed: Filed April 24th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Decree of Confirmation.

Court, No. 184. Transcript, No. 357.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California.

ANDRES PICO, appellant, vs. The United States, appellee. } Decree of confirmation. "Moquelomos."

STATED TERM, *April 24th*, 1857.

This cause coming on this day to be heard upon the transcript of the proceedings and decision of the board of land commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case, and the pleadings filed in this court, and counsel having been heard on the part of the United States and for claimant: In consideration of all which, the court is of opinion that there is error in the decision of the said board, and that the same should be and is hereby reversed.

And this court doth order, and adjudge, and decree that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed. The land of which confirmation is hereby made is of the extent of eleven square leagues and no more, and is known by the name of "Moquelomes," and is situate on the river Moquelumne, bordering upon the north upon the southern bank of said river, on the east on the adjacent ridge of moun-

tains, on the south on the land of Mr. Gulnac, and upon the west upon the estuaries of the shore, as described in the original decree and grant of the same by the governor of California, on the sixth day of June, 1846, a copy of which is on file in the transcript in this case.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed April 24th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Order granting Appeal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court room, in the city of San Francisco, on Friday, the 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven—present: The Honorable Ogden Hoffman, district judge:

THE UNITED STATES
vs.
Andres Pico.
} D. C., 184. L. C., 357.

In this case, on the application of the United States attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the Dec., 1856, term, be and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause, be sent to the Supreme Court of the United States without delay.

Endorsed: Filed September 4th, 1857. John A. Monroe, clerk.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from 1 to 38 inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, order, opinion, and decree, filed in this office in the case entitled, the United States, appellants, vs. Andres Pico, appellee.

In testimony whereof, I have hereunto set my hand, affixed the seal of the said court, the second day of October, A. D.
[SEAL.] 1857, and of the independence of the United States the eighty-second.

JOHN A. MONROE, *Clk.*